

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Appropriate Framework for Broadband	)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities	)	
	)	
Universal Service Obligations of Broadband	)	
Providers	)	
	)	
Computer III Further Remand Proceedings:	)	CC Docket Nos. 95-20, 98-10
Bell Operating Company Provision of	)	
Enhanced Services; 1998 Biennial Regulatory	)	
Review – Review of Computer III and ONA	)	
Safeguards and Requirements	)	

**REPLY COMMENTS OF GVNW CONSULTING, INC.**

GVNW Consulting, Inc. (GVNW) respectfully submits its reply comments in the above-captioned proceeding. GVNW is a management-consulting firm that provides a wide range of consulting services to rural carriers that are impacted by any Commission decisions made with respect to the provision of advanced services.

For all Americans, including those living in rural areas, broadband services are becoming increasingly important in both work and home life.

We offer for consideration that some of the policy decisions appropriate in dense urban markets will not translate to rural regions. Simply stated, one size does **not** fit all with respect to broadband service offerings. To this end, we will focus these reply comments on the impact of the regulatory treatment of broadband services for rural carriers in rural markets.

## I. INTRODUCTION AND BACKGROUND

In this NPRM proceeding, the Commission notes at paragraph 1 that it is undertaking a thorough examination of the appropriate legal and policy framework for broadband access to the Internet over domestic wireline facilities. The Commission further states in paragraph 1 that:

“It is widely believed that ubiquitous broadband deployment will bring valuable new services to consumers, stimulate economic activity, improve national productivity, and advance economic opportunity for the American public. The promise of broadband generally, and the proliferation of broadband Internet access services specifically, are fostering the creation, adoption and use of multimedia applications that can meet consumers’ broad communications, entertainment, information, and commercial needs and desires. These factors demand that the Commission develop general principles and policy goals that form the foundation of our broadband policymaking.” (NPRM, paragraph 1)

The Commission is faced with a difficult set of issues, as parties in the comment round expressed widely divergent opinions as to what is prudent public policy, with some comments focused only to urban circumstances. We believe this policy review must recognize the differences facing our nations’ rural carriers that are attempting to provide broadband access to the Internet over domestic wireline facilities. By recognizing these key differences and then developing a separate set of policy and procedures, the Commission will be able to advance the goals of the Act with respect to broadband access for the majority of rural customers.

## II. APPLICATION OF STATUTORY CLASSIFICATIONS TO WIRELINE BROADBAND INTERNET ACCESS SERVICES

To review the rules in place today, the Commission currently regards high speed Internet access over DSL service as two services. First, the “content” is not regulated (access to the Internet backbone and delivery of Internet based services such as web pages and e-mail), while the “transport” currently is regulated (the DSL broadband infrastructure between the customer location and the Internet service provider).

Some parties that filed comments have strong feelings that regulation of some sort should continue. For example, the Arizona Consumer Council, et al. stated that the Commission is attempting to illegally deregulate advanced services and repeal the pro-competitive and consumer protections of the 1996 Act. The Arizona Consumer Council further stated that Congress clearly defined advanced telecommunications separately from information services with the intent that advanced services would continue to be regulated. The Ruby Ranch Internet Cooperative Association added that the adoption of the FCC’s proposal to classify DSL Internet connectivity as an information service would represent the biggest setback ever to the availability of broadband Internet access in rural and other unserved areas. And, the Tele-Truth group asserts that the FCC’s proposals risk serious harm to consumers without a realistic prospect of commensurate benefit to the goal of broadband service and deployment.

### National Security Issues

Several parties raised issues outside of the normal “regulatory and cost recovery” issues. The Secretary of Defense filing (pages 2-3) raised issues regarding national security:

NS/EP (national security and emergency preparedness) communication functions will be best served if the provisioning of broadband Internet access over wireline

facilities remains classified as a “telecommunications service” that can be regulated by the Commission under Title II of the Act. (Parenthetical added)

The Internet Service Providers Associations in the states of Ohio, Texas, and Washington repeated this theme. These groups believe that the treatment of the transmission portion of wireline broadband Internet access as a telecommunications service is essential to the implementation of national security, privacy and consumer protection issues. GVNW concurs with these concerns. We further agree with parties that assert that national security issues should be addressed across all technologies in a competitively neutral fashion.

### III. REGULATORY FRAMEWORK FOR WIRELINE BROADBAND INTERNET ACCESS SERVICES

We will review both unbundling and cost recovery issues in this section.

#### Unbundling Issues

In our GVNW comments, we proposed that the Commission should exempt carriers from unbundling requirements:

“We recommend that companies eligible under Section 251 (f) be exempt from resale and interconnection requirements for advanced telecommunications capability and services for a period of at least 5 years.”

Several parties, including economists and Alcatel USA, Inc. agreed with our position. The filing of a group of 8 economists (Arrow, et al) concurred with GVNW in suggesting that the Commission should avoid imposing common carrier and unbundling requirements on broadband Internet services provided by telephone companies, just as it has done for cable companies. The rationale provided in this filing is that such

regulations are likely to deter investment and adversely affect the speed with which new products and services are deployed.

In another filing by economists (Aron, et al), the group asserted that common carrier and unbundling obligations that are applied unevenly to incumbent phone companies are likely to retard investment in this emerging business.

#### Cost Recovery Issues

In the specific case of DSL, it is in many cases considered an interstate service, with all DSL plant (electronics and circuit cards) assignable to the interstate jurisdiction. The National Exchange Carrier Association (NECA) has in place a tariff for DSL service and a mechanism for recovery of costs associated with DSL from the NECA pool. Under current rules for NECA members, DSL related to Internet is a special access service that is regulated, and the costs are recoverable from the interstate pool.

Our position in the comment round was that regardless of the outcome of this proceeding, it is critical that small ILECs continue to have the ability to participate in a viable pool that enables them to provide DSL-based service at reasonable rates. Without the cost-sharing and risk-spreading attributes of pools, many small ILECs will be unable to provide advanced services to their rural customers, an outcome that is at odds with both the Commission's goals and those of the Telecommunications Act of 1996. These existing rules that are in place provide for rural carriers the much-needed recovery of revenue requirement. One of our primary points in our GVNW comment filing was that the current Commission rules related to revenue requirement recovery (Parts 36 and 69) should be continued for a period of at least five years in rural markets in order to

recognize the nascent status of broadband infrastructure deployment. Several parties filed concurring comments with this position.

The National Exchange Carrier Association (NECA) commented that the FCC should not adopt a “one-size-fits-all” policy but rather continue to allow rate of return carriers the option to tariff stand alone broadband access service. NECA suggested that some carriers would not be able to offer broadband without the assurances provided by the tariff and pooling processes. NECA commented that the removal of this tariff option could well have the undesirable impact of slowing the continued deployment of advanced services to rural customers. The United States Telecom Association (USTA) filing offered that carriers eligible for participation in the NECA pools should be allowed to opt out of broadband deregulation, and have their broadband services treated as Title II services. The National Rural Telecommunications Association (NRTA) agreed as well, offering that the Commission should maintain the opportunity for carriers to continue with the NECA tariffing and pooling of broadband services.

OPASTCO commented in a similar vein. OPASTCO expressed concern about the effects that changes to the regulatory framework for wireline broadband Internet access might have on the long-term ability of rural ILECs to deploy advanced services, and urged the Commission to preserve a pooling option for rural ILECs’ DSL-based service offerings. OPASTCO also stated that regardless of the classification the Commission chooses to apply to wireline broadband Internet access, the FCC should continue to permit all loop-related costs to be allocated entirely to voice telecommunications services.

#### IV. UNIVERSAL SERVICE OBLIGATIONS OF ALL PROVIDERS OF BROADBAND INTERNET ACCESS

The Commission should be cautious with respect to its actions in this area, as a variety of parties expressed concern as to the impact of the Commission's proposals on universal service in rural areas.

As noted by the American Public Power Association, it appears that the Commission has elevated the goal of rapid deployment of broadband to a status higher than all other important goals of the 1996 Act.

Concerns with respect to universal service obligations were expressed by the Arizona Consumer Council et al., stating in part that by deregulating advanced services, the Commission will allow providers of advanced telecommunications services to avoid payments to the universal service fund, undermining its long term viability.

Parties representing tribal issues raised other universal service concerns. The Mescalero Apache Telecom, Inc. group stated opposition to the redefinition or reclassification of wireline broadband Internet access as information services because of the grave economic consequences to tribal and rural carriers ability to maintain federal universal service support.

If the Commission is committed to seeing that advanced services are offered throughout all regions of the country, then adequate revenue requirement recovery will need to be available for the high-cost areas. As we stated in our comments, we should not assume that there will be someone available to serve the advanced services needs of all citizens, especially those who live a great distance from the serving wire center. This assumption may not be valid without adequate revenue requirement recovery.

## CONCLUSION

Dealing with technological changes to regulatory paradigms is nothing new to the Commission. This proceeding is one of several concurrent proceedings, in which the Commission is focusing on the regulatory treatment under Title II of broadband services and the facilities over which such services are provided. A thorough and considered debate is needed as we continue in the evolution from a one-wire environment to a matrix of delivery options for the end-user customer.

In testimony in May before the Senate Commerce Committee, the President of the California Public Utility Commission warned Congress not to deregulate broadband data services, **comparing the potential impact with the disastrous results of California's energy deregulation policies.**

We urge the Commission to be cautious with respect to broadband policy changes applicable to rural customers and not apply a "one size fits all" solution to the industry.

Respectfully submitted,

*- Electronically submitted via the FCC's Electronic Comment Filing System -*

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